

In the Matter of License No. 57769 and all other Seaman Documents
Issued to: JAMES L. SPEARS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1471

JAMES L. SPEARS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 18 May 1964, an Examiner of the United States Coast Guard at St. Louis, Missouri, suspended Appellant's seaman documents for three months outright plus three months on twelve months' probation upon finding him guilty of a violation of a statute. The specification found proved alleges that while serving as the Operator of the United States vessel LANNY, under authority of the license above described, on 13 April 1964, Appellant operated the vessel without a deck hand as required by her Certificate of Inspection.

At the hearing, Appellant elected to act as his own counsel. Since Appellant entered a plea of guilty to the charge and specification, no evidence was introduced and the record is absolutely void with respect to the number of passengers on board at the time of alleged offense.

At the end of the hearing, the Examiner immediately rendered a written decision in which he concluded that the charge and specification had been proved by plea.

OPINION

The LANNY is a nonself-propelled barge of 27 gross tons and 60 feet in length which operates, with a towing vessel, as a ferryboat on the Illinois River in the vicinity of Pearl, Illinois. After inspection under 46 U. S. Code 390a as a "vessel" which carries more than six passengers, the LANNY was issued a Certificate of Inspection requiring a licensed operator on the towing vessel and a deck hand on the barge. Although there is no qualification of the latter requirement contained on the Certificate of Inspection, 46 CFR 175.05-1(a) and 176.01-1(b) indicate that nonself-propelled vessels of not over 100 gross tons, under 65 feet in length, and

carrying six or less passengers are exempt from complying with the requirements of their Certificates of Inspection.

The record as a whole suggests the possibility that no consideration was given to the fact that a deck hand is not required except when there are more than six passengers on board. There is no allegation in the specification pertaining to this material element and, as stated above, there is a complete lack of reference in the record concerning the number of passengers on board. Consequently, the conclusion that Appellant was guilty of an offense when he operated the LANNY without a deck hand is set aside and the case will be remanded for evidence to support this necessary element of proof after Appellant's plea has been changed to not guilty. See Commandant's Appeal Decision No. 1463 for an identical situation.

Before the hearing is reopened, the Investigation Officer shall be given an opportunity to withdraw the charge and specification and serve a new charge and specification on the Appellant.

ORDER

The order of the Examiner dated at St. Louis, Missouri, on 18 May 1964, is VACATED. The record is REMANDED with directions to reopen the hearing for further proceedings not inconsistent with this decision.

W. D. SHIELDS
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 14th day of September 1964.